

# EXHIBIT F

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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PATRICIA DeSANTIS,  
individually and as Successor  
in Interest for RICHARD  
DeSANTIS, deceased, and as  
Guardian Ad Litem for DANI  
DeSANTIS, a minor and TIMOTHY  
FARRELL, a minor,

Plaintiffs,

vs.

No. C-07 3386 JSW

CITY OF SANTA ROSA, JERRY  
SOARES, RICH CELLI, TRAVIS  
MENKE, PATRICIA MANN, and DOES  
1 through 25, inclusive,

Defendants.

DEPOSITION OF OFFICER JERRY ELLSWORTH

July 24, 2008

REPORTED BY: A. MAGGI SAUNDERS,

C.S.R. No. 2755



A. Maggi Saunders & Associates  
Certified Shorthand Reporters

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License No. 2755

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7 DeSANTIS, deceased, and as )  
8 Guardian Ad Litem for DANI )  
9 DeSANTIS, a minor and TIMOTHY )  
10 FARRELL, a minor, )  
11 )  
12 Plaintiffs, )  
13 )  
14 vs. ) No. C-07 3386 JSW  
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16 CITY OF SANTA ROSA, JERRY )  
17 SOARES, RICH CELLI, TRAVIS )  
18 MENKE, PATRICIA MANN, and DOES )  
19 1 through 25, inclusive, )  
20 )  
21 Defendants. )  
22 )  
23 DEPOSITION OF OFFICER JERRY ELLSWORTH  
24 July 24, 2008  
25  
26 REPORTED BY: A. MAGGI SAUNDERS.  
27 C.S.R. No. 2755  
28  
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1 BE IT REMEMBERED that, pursuant to Notice  
2 of Taking Deposition, and continued by Stipulation,  
3 and on Thursday, the 24th day of July, 2008,  
4 commencing at the hour of 2:41 o'clock p.m. thereof,  
5 at the SCOTT LAW FIRM, 1375 Sutter Street, Suite 222,  
6 San Francisco, California 94109, (415) 561-9600,  
7 before me, A. MAGGI SAUNDERS, a Certified Shorthand  
8 Reporter in and for the State of California, there  
9 personally appeared  
10  
11 OFFICER JERRY ELLSWORTH,  
12  
13 called as a witness by the Plaintiffs , who, being by  
14 me first duly sworn, was thereupon examined and  
15 interrogated as hereinafter set forth.  
16  
17 ---oOo---  
18  
19 SCOTT LAW FIRM, 1375 Sutter Street, Suite  
20 222, San Francisco, California 94109, (415) 561-9600,  
21 represented by JOHN HOUSTON SCOTT, ESQ., and ALY  
22 BECK, ESQ., appeared as counsel on behalf of  
23 Plaintiffs .  
24  
25 Page 3

1 CITY OF SANTA ROSA, OFFICE OF THE CITY  
2 ATTORNEY, 100 Santa Rosa Avenue, Santa Rosa,  
3 California (707) 543-3040, represented by CAROLINE L.  
4 FOWLER, CITY ATTORNEY, and JOHN FRITSCH, ASSISTANT  
5 CITY ATTORNEY, appeared as counsel on behalf of  
6 Defendants .  
7  
8 EUREKA STREET LEGAL VIDEO, 511 Eureka  
9 Street, San Francisco, California 94114, (415)  
10 643-9190, represented by STEPHEN STATLER, PRINICPAL  
11 VIDEOGRAPHER, appeared to videotape the proceedings  
12 on behalf of the Plaintiffs.  
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23  
24  
25 Page 4

1 same.  
2 A. But he was not running toward the  
3 Officers? That's the only --  
4 Q. Right. Yes.  
5 A. Yes, I would have released him.  
6 Q. Thank you.  
7 Why?  
8 A. Why would I have released him?  
9 Q. Yes.  
10 A. Because he was running away from us, and  
11 it was somebody that we had to catch.  
12 I don't know if he's armed, he was being  
13 violent. I don't know if he's got a gun.  
14 He wasn't running towards us. We  
15 weren't up against a time wall.  
16 And, again, the other factors that I  
17 have to -- You know, as clean as you are talking, if  
18 that's the only thing that changed, and I had my dog  
19 focused on him, there were no other threats, nothing  
20 else changed, but there is --  
21 Q. Right.  
22 A. You know, part of my job as a handler is  
23 to focus my dog. If the dog is not in focus, is it the  
24 person that I want them to seize.  
25 You know, if I want them to seize you,  
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1 and he's looking left, you know, part of my job is to  
2 send him to the correct person, and be trained to do  
3 that.  
4 So, assuming that I would have had that  
5 opportunity --  
6 Q. Right.  
7 A. -- without anybody else moving, and no  
8 other factors changing, yeah, it's a possibility that I  
9 would have sent him.  
10 Q. Did you have Duke focused on Richard  
11 DeSantis from the time you got there?  
12 A. He was focused in that direction, yes.  
13 Q. Okay. And was there ever a period of time  
14 when he wasn't focused in the direction of Richard  
15 DeSantis?  
16 A. Possibly.  
17 Q. You don't remember, or you don't know?  
18 A. No.  
19 Q. You just don't remember?  
20 A. I don't recall. I mean, if he were there  
21 for a minute, if he looked left or looked right, I  
22 don't remember if he moved his head once or twice.  
23 Q. Was it your intention to have Duke focused  
24 on Richard DeSantis --  
25 A. Yes.  
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1 Q. Why?  
2 A. Because he's the person that we were  
3 dealing with.  
4 Q. Did you ever see Richard DeSantis down on  
5 the ground on his knees?  
6 A. Yes.  
7 Q. For how long did you see him on his knees?  
8 A. Couple of seconds.  
9 Q. Okay. And how long did you see him on the  
10 ground?  
11 A. A couple of seconds.  
12 Q. Okay. And when he got up from the ground,  
13 what did you see him do?  
14 A. Which time?  
15 Q. The first time.  
16 A. I believe he came back -- If I remember  
17 correctly, he came back to his knees, and then went  
18 back down again.  
19 Q. How long was he on his knees?  
20 A. A couple seconds.  
21 Q. And then what did he do?  
22 A. Went almost -- almost back to like what  
23 I'm going to call a prone position, which would be  
24 laying down.  
25 Q. Okay. Did you consider releasing Duke at  
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1 that point?  
2 A. No.  
3 Q. Why not?  
4 A. He was complying.  
5 Q. Okay. When did he stop complying?  
6 A. When he immediately charged after us;  
7 charged at us, I should say.  
8 Q. Okay. And how far away from you was he  
9 when he did that?  
10 A. Approximately 30 feet.  
11 Q. And at that time did you consider  
12 releasing Duke?  
13 A. No.  
14 Q. Why not?  
15 A. It was too close.  
16 Q. What do you mean, "too close"?  
17 A. Well, he was coming right at the three of  
18 us, Officer Mann, Officer Menke and myself.  
19 Both Officer Mann and Menke were in my  
20 peripheral vision to the left --  
21 Q. Huh-huh.  
22 A. -- and they had their firearms fully  
23 extended --  
24 Q. Right?  
25 A. -- and he was going right at them.  
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1 A. Legal Defense Fund.  
2 Q. And did you ask for him to be your lawyer?  
3 MS. FOWLER: I'm going to object. To the  
4 extent that calls for privileged attorney-client  
5 communication, I'd instruct you not to answer.  
6 MR. SCOTT: Q. Well, I'm not asking --  
7 I'm not asking what you said to Paul Brennan.  
8 Did you ask someone who wasn't a lawyer,  
9 "Hey, I want a lawyer"?  
10 A. Yeah.  
11 Q. Who?  
12 A. I don't remember who it was. Somebody  
13 from the POA.  
14 Q. Okay. So you contacted an Officer with  
15 the POA, or the organization --  
16 A. Well, a Board member.  
17 Q. Okay. So you asked an Officer to provide  
18 you with an attorney.  
19 A. Right.  
20 Q. All right. Do you know if Mr. Brennan was  
21 representing any of the other Officers?  
22 A. I don't know --  
23 MS. FOWLER: To the extent that may call  
24 for privileged communications, I would instruct you not  
25 to answer; but if you know through any other source,  
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1 you can answer the question.  
2 THE WITNESS: I don't know.  
3 MR. SCOTT: Q. Okay. Anybody ever talk  
4 to you about possible conflict of interest?  
5 MS. FOWLER: And, again, to the extent  
6 that involves confidential attorney-client  
7 communications, do not reveal any discussions you had  
8 with an attorney about that.  
9 If anyone else discussed that with you,  
10 you can answer the question.  
11 THE WITNESS: No.  
12 MR. SCOTT: Q. Now, in your -- if you  
13 would look at page 30 of Exhibit No. 1, there is a  
14 couple places where you used the term "funneling," and  
15 it's near the bottom of page.  
16 What did you mean by that, the word,  
17 "funneling"?  
18 A. (Reading the document)  
19 MS. FOWLER: (Indicating)  
20 THE WITNESS: Meaning, looking at it, you  
21 know, just like a funnel-type pattern.  
22 MR. SCOTT: Q. Like, tunnel vision?  
23 A. Well, not necessarily.  
24 Q. Okay. Then, what do you mean by  
25 "funneling"? I'm having a hard time understanding.  
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1 A. He was -- He was basically focusing in one  
2 particular area --  
3 Q. Okay.  
4 A. -- not, you know, over here and over  
5 there, it was a focus on a particular area.  
6 Q. And you said, "He was in a dazed or  
7 confused state" at the of bottom of page 30.  
8 What did you mean by that?  
9 A. Well, he just looked like he was --  
10 I mean, he just had like kind of a blank  
11 look on his face a lot of the times, looking at --  
12 almost like, you know, if you were to speak to  
13 somebody in a foreign language, they don't -- you  
14 know, they kind of just have this blank stare at you,  
15 like. . .  
16 Q. Now, did you refer to him as "Raging  
17 Bull"?  
18 A. Yes.  
19 Q. What did you mean by that?  
20 A. I just was -- He was -- When he was in his  
21 prone position, if you will, laying down on the  
22 ground --  
23 Q. Mm-hmm?  
24 A. -- he was up and running and coming  
25 straight at us before he was anywhere near vertical.  
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1 It was like he was in a sprinter's box,  
2 and he just had this -- like his face was red, his  
3 teeth were gritted, and he was just like a raging  
4 bull, just coming right at us.  
5 Q. Okay. You weren't referring to the movie  
6 "Raging Bull" the boxer, you are talking about the --  
7 A. I've never seen the movie, no.  
8 Q. Okay. So you weren't trying to suggest  
9 that he was acting like a boxer, he was more like an  
10 animal who was kind of head down, running.  
11 A. Correct.  
12 Q. Okay. Have you ever been to a bullfight?  
13 A. Have I ever been to one?  
14 Q. Yeah.  
15 A. No.  
16 Q. Okay. The second shot that you heard  
17 after the Sage, did it sound to you like it came from a  
18 rifle?  
19 A. Well, I can't say. I don't know.  
20 Q. Could you tell where the second shot came  
21 from?  
22 A. No.  
23 Q. Did it appear to you that the second shot  
24 hit Mr. DeSantis?  
25 A. I don't know. They were all pretty quick,  
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STATE OF CALIFORNIA ) ss.  
)

CERTIFICATE OF REPORTER

I, A. MAGGI SAUNDERS, a Certified Shorthand Reporter in and for the State of California, duly appointed and licensed to administer oaths and so forth, do hereby certify:

That the witness named in the foregoing deposition was by me duly sworn to tell the truth, the whole truth and nothing but the truth;

That the deposition was reported by me, a Certified Shorthand Reporter and disinterested person, and thereafter transcribed into typewriting under my direction;

That if the deposition has not been signed by the time of trial, a reasonable opportunity having been given the witness to do so, signature has been waived in accordance with stipulation between counsel.

IN WITNESS WHEREOF, I have hereunto set my hand and subscribed my signature this 30th day of July, 2008.

*A. Maggi Saunders CSR*

A. MAGGI SAUNDERS, C.S.R. No. 2755,  
Certified Shorthand Reporter,  
In and For the State of California

